

Comments

06-T-0650

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Denise M. Sheehan
Commissioner

July 18, 2006

Honorable Jaclyn Brilling
Secretary
State of New York Public Service Commission
Three Empire State Plaza, 14th Floor
Albany, NY 12223-1350

Re: Case No. 06-T-0650 Application of New York Regional Interconnect, Inc. For a
Certificate of Environmental Compatibility and Public Need Pursuant to Article
VII of the Public Service Law

Dear Secretary Brilling:

The Department of Environmental Conservation (DEC) has reviewed the application filed by New York Regional Interconnect (NYRI or Applicant) for a Certificate pursuant to Article VII of the Public Service Law and respectfully offers the following comments for your consideration. These comments reflect DEC's overall concerns with the scope and content of the application, which we believe are significantly deficient at this point in time. We intend to provide more detailed comments upon the submission of a complete application. By separate letter DEC will comment on the Motion for Waiver of Certain Application Requirements.

Section 122 of the Public Service Law requires an applicant for a major transmission facility to identify the site or right of way, describe the transmission facility to be constructed thereon, provide a summary and description of studies which have been made of the environmental impact of the project, provide a statement explaining the need for the facility, describe any reasonable alternate location(s) for the proposed facility, and include such other information as the applicant may consider relevant or the Commission of Public Service (Commission) may require. It is DEC's position that the NYRI filing fails to include the information which is expressly required by statute and necessary for a thorough assessment of potential environmental impacts, feasible alternatives, and appropriate mitigation measures. Accordingly, the DEC believes that the application filed by NYRI should be deemed incomplete.

Below is a discussion of the subject areas in the application, which, from the Department's perspective, are notably deficient in terms of the scope and content of information provided. These comments are intended to be preliminary and highlight those issues which are

most problematic. DEC will file more detailed comments upon further review of the application and any additional submissions.

Visual Assessment

The scope and extent of the Visual Assessment provided in the application is wholly inadequate for a project of this magnitude and does not meet even the minimum requirements contained in DEC's Program Policy "Assessing and Mitigating Visual Impacts" (DEP-00-2, July 31, 2000). The nature of visual assessment is that visual impacts are very dependent on the location of each facility structure, and how a single structure may impact a unique area with distinct, recognized characteristics. The Applicant's visual analysis in this case does not represent the cumulative nature of this proposal and needs to be significantly expanded. It is deficient in four major respects:

Viewshed - should be for a five mile area and for the entire length of the proposal;

Visual Simulation - should be done for entire project length, not just six sample locations;

Inventory of Sensitive Land Uses - should be done for all 15 land use categories identified in the DEC policy;

Mitigation - should address all eight mitigation measures listed in the DEC policy.

State Lands

The Proposed Route described in the application is 190 miles long and consists of a study corridor one-quarter mile wide centered on the line location described therein. Based on information contained in the application and preliminary analyses conducted by DEC Staff, the Proposed Route will, or has the potential to, encroach upon State Lands including, but not necessarily limited to: the Rogers Environmental Education Center in Chenango County; the Melondy Hill State Forest in Chenango and Broome Counties; the Columbia Lake State Forest in Delaware County; and the Mongaup Wildlife Management Area in Sullivan County.

Sullivan and Delaware Counties are Forest Preserve Counties and any lands held by the State in those counties, including reforestation lands and wildlife management areas, are subject to a Constitutional prohibition against alienation. Specifically, the New York State Constitution prohibits any alienation of these lands, including the sale or the granting of any easements or rights-of-way. Modification of this prohibition can only be addressed through a constitutional amendment, which is highly unlikely to occur in coordination with this application. Accordingly, no portion of the proposed facility may cross or encroach upon any State lands in Sullivan and Delaware counties.

In addition, while there is no constitutional prohibition against alienating State lands in non-Forest Preserve counties, the State Legislature has not authorized DEC to sell such lands or grant an easement or right-of-way on these lands. The alienation of State lands could only occur through legislation, which again is not likely to occur. Therefore, the Proposed Route should avoid contact with State lands altogether.

Threatened and Endangered Species

Section 122 of the PSL requires that an application for an Article VII certificate include information necessary to properly assess environmental impacts. Considering that the proposed transmission facility will span nearly 200 miles and, like other such facilities, will be a permanent structure that exists for decades, DEC believes that NYRI's application must include comprehensive on-site field surveys and studies of plant and animal resources and how those resources could be potentially impacted by the construction and operation of the proposed project.

On several occasions, DEC provided information from the New York Natural Heritage Program to the applicant. This data included reports and maps of rare or state-listed animals and plants and significant natural communities which our databases indicate occur or may occur on the Proposed Route or in the immediate vicinity of the Proposed Route. As the correspondence indicated, the information contained in the Natural Heritage Program reports is not necessarily definitive on the presence or absence of all rare or state-listed species or significant natural communities and is not a substitute for on-site surveys that are necessary for a complete environmental impact assessment. The Department has advised the applicant that along significant portions of the Proposed Route the variety of species possibly affected and the frequency with which the Route traverses their habitats poses a major concern for the Department. In addition, DEC has expressed concern that the use of explosives in sensitive areas could cause irreparable harm to threatened and endangered species and that this potential adverse impact must be thoroughly addressed. All of these concerns need to be addressed as part of the assessment of what species may be impacted by the project.

DEC will work with NYRI to design acceptable protocols for the studies and evaluate study results to ensure that data collected is comprehensive and accurate and will facilitate a meaningful assessment of environmental impacts.

Alternatives Analyses

Alternative Techniques

Pursuant to Section 126.1(d), PSC must consider the partial burial of transmission lines. The Applicant, however, only addresses burial of the entire route, in Section 3.1.2, and dismisses this alternative as too costly. Nowhere does the Applicant examine partial burial. The application should consider burial of the proposed transmission line in selective instances, such as under DEC wetlands and in sensitive visual areas.

Alternative Routes

The application fails to examine alternative routes to the Proposed Route. System wide alternatives such as the Thruway and Marcy South are not addressed, nor are alternatives provided for sensitive environmental areas such as State lands, DEC wetlands, or critical habitats. DEC has discussed these concerns with the applicant on repeated occasions, particularly with reference to the Mongaup Wildlife Management Area, which as discussed

herein, must be avoided. This issue needs particular attention in future scoping discussions involving the Applicant and active/interested parties.

Study Corridor Assessment

The application provides inadequate detail, in both maps and tables, for an assessment of impacts across the breadth of the study corridor. While much of the line follows existing corridors, until it is known where actual structures will be placed it is impossible to assess their ecological impacts. Much more information must be provided in visual and tabular form to allow assessment of the proposed route as to where deviations would minimize impacts. The form and level of information, again, needs thorough scoping before NYRI makes another submission.

Converter Station Details

The Applicant has failed to provide sufficient information to assess the impacts of constructing and operating the two required Converter Stations. According to applicant correspondence (October 25, 2005), the stations will require a minimum 20 acre clearing to build but could take up to as much as 40 acres. Depending on the extent and type of area disturbed, project impacts could vary significantly. The applicant must provide information necessary to assess impacts, particularly the visual impacts in this case.

Cumulative Impacts

In December 1997, Millennium Pipeline Company, L.P. and Columbia Gas Transmission Company filed an initial application under section 7(c) of the Natural Gas Act, Part 157 of the Federal Energy Regulatory Commission (FERC) regulations. The initial application addressed the consortium's plan to construct, acquire, own, and operate a 422-mile long natural gas pipeline extending from an interconnection in Lake Erie at the U.S./Canada border, through southern New York and ending at Mount Vernon, Westchester County. While the application has been modified since it was originally submitted, the purpose of the pipeline is still to transport U.S. and Canadian natural gas to growth markets in the eastern U.S. FERC issued a "Draft Supplemental Environmental Impact Statement, June, 2006" and the project was listed in the Federal Register June 22, 2006 (www.epa.gov/fedrgstr/EPA-IMPACT/20006?june/Day-22/i9804.htm). Significantly, the Millennium Pipeline (now Northeast (NE)-07 Project) would impact the State's Mongaup Wildlife Management Area. The Millennium Pipeline project adds to regional impacts associated with New York Regional Interconnect's electric transmission project. Taken together, the Millennium Pipeline and NYRI projects represent cumulative impacts to State land and other natural resources that NYRI should address. The applicant must provide a thorough review of the cumulative impacts represented by these two related energy projects.

Given the magnitude and complexity of the project and the significant deficiencies in the current application, DEC respectfully suggests that the Commission direct NYRI to engage in an application scoping process with regulatory agencies, local governments and members of the public to identify the relevant issues and necessary studies and evaluations to be completed and included in a resubmitted application.

We appreciate the opportunity to comment at this time. Again, we will soon be commenting on the applicant's motion for waivers. If you have any questions regarding these comments, please contact Jeffrey Gregg at the above number and address.

Respectfully,

A handwritten signature in black ink, appearing to read 'John J. Ferguson', followed by a horizontal line.

John J. Ferguson
Transmission Projects Supervisor